

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MAJESTIC DRUG CO., INC.,

Plaintiff,

V.

DENTEK ORAL CARE, INC.,

Defendant.

ECF CASE

Civ. No.: 07 CV 5474 (LAP)

## COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Majestic Drug Co., Inc. (“Majestic”), through its attorneys, alleges as follows:

1. This is an action for False Advertising arising under 15 U.S.C § 1125(a), for False Advertising arising under N.Y. Gen. Bus. Law § 350, for Deceptive Acts and Practices arising under N.Y. Gen. Bus. Law § 349, and for Common Law Unfair Competition.

## THE PARTIES

2. Plaintiff Majestic is a corporation organized and existing under the laws of New York, with its principal place of business at P.O. Box 490, 4996 Main Street (Rte. 42), South Fallsburg, New York 12779.

3. Upon information and belief, Defendant DenTek Oral Care, Inc. (“DenTek”) is a corporation organized and existing under the laws of Tennessee, with its principal place of business at 307 Excellence Way, Maryville, Tennessee 37801.

## JURISDICTION AND VENUE

4. The Court has original subject matter jurisdiction over this action because the matter in controversy exceeds the sum or value of \$75,000 exclusive of interests and costs and is between citizens of different states and pursuant to 28 U.S.C. §§ 1331, 1332(a)(1), 1338(b) and

15 U.S.C. § 1121(a). The Court has supplemental jurisdiction over the state law claim pursuant to 28 U.S.C. § 1367.

5. The Court has personal jurisdiction over defendant DenTek because DenTek maintains continuous and systematic commercial contacts with New York State. Also, DenTek has purposefully availed itself of the opportunity to conduct commercial activities in this forum, and this Complaint arises out of those activities.

6. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b) and (c).

### **STATEMENT OF FACTS**

7. Majestic is a wholesaler and distributor of pharmaceutical necessities throughout the country.

8. Among its numerous products, Majestic markets, sells and distributes dental products branded as Dentemp® O.S., the temporary dental cement, and Refilit®, the lost filling replacement.

9. DenTek markets, distributes and sells competing products to Majestic's dental products throughout the country and within this District.

10. DenTek package for its "Lost Filling, Loose Crown Repair" prominently claims: "3x STRONGER vs Dentemp O.S.". A true and correct copy of the packaging for this DenTek's competing product is attached hereto as Exhibit A.

11. DenTek package for its "Lost Filling Repair, Maximum Hold" prominently claims: "3x STRONGER vs Refilit". A true and correct copy of the packaging for this DenTek's competing product is attached hereto as Exhibit B.

12. On information and belief, these claims as stated on DenTek packages are false and/or misleading, and they have deceived or had tendency to deceive all of those in the market channels and the chain of distribution, including purchasers of those products referred to above.

## **COUNT I**

### **False Advertising Under Lanham Act § 43**

13. Plaintiff realleges paragraphs 1-12 of this Complaint as if fully set forth herein.

14. DenTek's use of the false and/or misleading claims on its packages in order to promote, market, distribute and sell its products in direct competition with Majestic constitutes False Advertising pursuant to 15 U.S.C. § 1125(a).

15. DenTek's false advertising has caused and will continue to cause damage to Majestic, and is causing irreparable harm to Majestic for which there is no adequate remedy at law.

16. Moreover, unless DenTek is enjoined by this Court from continuing to make these claims and ordered to retract and correct them, the false and/or misleading advertising will continue to cause Majestic to suffer sales and profits which will irreparably injure Majestic.

## **COUNT II**

### **False Advertising Under N.Y. Gen. Bus. Law § 350**

17. Plaintiff realleges paragraphs 1-16 of this Complaint as if fully set forth herein.

18. The above described acts constitute False Advertising under N.Y. Gen. Bus. Law § 350.

19. DenTek's action has caused and will continue to cause damage to Majestic, and is causing irreparable harm to Majestic for which there is no adequate remedy at law.

## **COUNT III**

### **Deceptive Acts and Practices Under N.Y. Gen. Bus. Law § 349**

20. Plaintiff realleges paragraphs 1-19 of this Complaint as if fully set forth herein.

21. DenTek's claims on its packages are deceptive in that they are false and/or misleading, and they have deceived or had tendency to deceive all of those in the market channels and the chain of distribution, including purchasers of those products referred to above.

22. These acts constitute Deceptive Acts and Practices Under N.Y. Gen. Bus. Law § 349.

23. DenTek's action has caused and will continue to cause damage to Majestic, and is causing irreparable harm to Majestic for which there is no adequate remedy at law.

#### **COUNT IV**

##### **Common Law Unfair Competition**

24. Plaintiff realleges paragraphs 1-23 of this Complaint as if fully set forth herein.

25. The above described acts constitute Unfair Competition under the Common Law.

26. DenTek's action has caused and will continue to cause damage to Majestic, and is causing irreparable harm to Majestic for which there is no adequate remedy at law.

WHEREFORE, Plaintiff respectfully request that the Court:

1. Issue a preliminary and permanent injunction, enjoining and prohibiting DenTek, or its agents, servants, employees, representatives, officers, attorneys, successors, assigns, subsidiaries and affiliates from directly or indirectly using in commerce or causing to be published or otherwise disseminated any promotional materials or activities containing any of the false and/or misleading claims described in the complaint, including the false and/or misleading claims appearing on DenTek packages referenced in this complaint;

2. Issue a preliminary injunction and permanent injunction ordering DenTek to issue appropriate corrective advertisements, reasonably designed to reach all people to whom its claims were directly or indirectly directed at, retracting the false and/or misleading claims showed on its packages;

3. Order an award of damages in an amount to be determined at trial;
4. Order an award of treble damages, in an amount to be determined at trial,  
pursuant to 15 U.S.C. § 1117(a) and N.Y. Gen. Bus. Law § 349(h);
5. Order an award of attorney's fees and costs as provided by 15 U.S.C. § 1117(a)  
and N.Y. Gen. Bus. Law § 349(h); and
6. All further relieves that the Court deems appropriate.

Dated: New York, New York  
June 7, 2007

THELEN REID BROWN RAYSMAN & STEINER LLP

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# Exhibit A



# Exhibit B



